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Michael K. Mutter
Birch, Stewart, Kolasch & Birch, LLP
P.O. Box 747
Falls Church, VA 22040-0747

In re Application of	:	DECISION ON PETITION
WHITAKER	:	
Serial No.: 10/018,316	:	
PCT No.: PCT/SE00/01302	:	UNDER 37 CFR 1.47(b)
Int. Filing Date: 19 June 2000	:	
Priority Date: 24 June 1999	:	
Atty Docket No.: 0091-0207P	:	
For: SHAPE CONFORMING SURFACE	:	
COVERING	:	

This decision is in response to the petition under 37 CFR 1.47(b) filed 10 April 2002 to accept the application without the signature of inventor Derek Whitaker.

BACKGROUND

On 19 June 2000, applicant filed international application PCT/SE00/01302. A copy of the international application was communicated to the United States Patent and Trademark Office from the International Bureau on 04 January 2001. A Demand for international preliminary examination, in which the United States was elected was filed prior to the expiration of nineteen months from the priority date. Accordingly, the thirty-month period for paying the basic national fee in the United States expired at midnight on 24 December 2001.

On 18 December 2001, applicant filed a transmittal letter for entry into the national stage in the United States, which was accompanied by the requisite basic national fee as required by 35 U.S.C. 371(c)(1); an Information Disclosure Statement and a FIRST preliminary amendment. An oath or declaration as required by 35 U.S.C. 371 (c)(4) was not filed.

On 14 February 2002, applicant was mailed a **NOTIFICATION OF MISSING REQUIREMENTS UNDER 35 U.S.C. 371** (Form PCT/DO/EO/905) informing applicant of the need to provide an oath or declaration of the inventors, in compliance with 37 CFR 1.497(a) and (b), identifying the application by the International application number and international filing date. Applicant was given two months to respond and advised that this time period could be extended with a proper petition and payment of fees.

On 10 April 2002, applicant responded with the present petition under 37 CFR 1.47(b) to accept the application without the signature of inventor Derek Whitaker.

DISCUSSION

A petition under 37 CFR 1.47(b) must be accompanied by: (1) the requisite petition fee under 37 CFR 1.17(I); (2) factual proof that the inventor refuses to execute the application or cannot be reached after diligent effort; (3) a statement of the last known address of the non-signing inventor; (4) an oath or declaration executed by the 37 CFR 1.47(b) applicant on behalf of and as an agent for the non-signing inventor; (5) proof of proprietary interest in the application; and, (6) a showing that such action is necessary to preserve the rights of the parties or to prevent irreparable damages. With the filing of the present petition and papers, applicant has satisfied items (1), (3), (4) and (5).

Regarding item (2) above, petitioner has not provided any evidence to show that Mr. Whitaker has been provided with a complete set of the application papers as required under the Manual of Patent Examining Procedure (MPEP) section 409.03 (d). Applicant has merely alleged that Mr. Whitaker refuses to execute the declaration, however, nowhere in the petition nor accompanying papers, is it stated that a complete set of papers (namely, specification, including claims, drawings and oath or declaration) was presented to Mr. Whitaker. In view of the above, item (2) has not been satisfied. In order to satisfy this requirement, such a statement must be signed by someone with first hand knowledge and must set forth specific facts as to the attempts to obtain Mr. Whitaker's signature, including presenting him with a complete set of application papers and his subsequent refusal.

As to item (6), applicant has not made a showing nor provided a statement that such action is necessary to preserve the rights of the parties or to prevent irreparable damages.

CONCLUSION

For the reasons stated above, applicant's petition under 37 CFR 1.47(b) is **DISMISSED without prejudice.**

If reconsideration on the merits of this petition is desired, a proper response must be filed within **TWO (2) MONTHS** from the mailing date of this decision. Any reconsideration request should include a cover letter entitled, "Renewed Petition Under 37 CFR 1.47(b)." No additional petition fee is required. Extensions of time may be obtained under 37 CFR 1.136(a).

Should status under 37 CFR 1.47(b) not be successfully completed, the international application will be viewed as having become abandoned with respect to the United States of America.

Any further correspondence with respect to this matter should be directed to the Assistant Commissioner for Patents, Box PCT, Washington, D.C. 20231, with the contents of the letter directed to the attention of the PCT Legal Office.



Richard Cole
Legal Examiner
PCT Legal Office



Derek A. Putonen
Petitions Attorney
PCT Legal Office
Tel: (703) 305-0130
Fax: (703) 308-6459